

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

EMERY CELLI BRINCKERHOFF & ABADY LLP

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
EMERITUS

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN
MICHELE YANKSON

DANIEL TREIMAN

December 20, 2018

Via ECF

Hon. Kenneth M. Karas
United States District Judge
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601

Re: *Samuels v. Fischer*, No. 13 Civ. 08287

Dear Judge Karas:

We represent Plaintiff Kenneth Samuels in this prisoner excessive force case. On November 2, 2018, the Court granted, over Plaintiff's opposition, Defendants' request for a stay of discovery until December 17, 2018 "to allow the parties to pursue settlement in this matter." ECF No. 218. Although Plaintiff served a detailed written settlement demand in this case on July 27, 2018, Defendants have never responded, and failed to engage in any settlement discussions during the pendency of the 45-day stay. Plaintiff now requests that the Court resolve two outstanding discovery disputes by compelling Defendants to produce two categories of documents: (1) medical and Workers' Compensation records concerning Defendants Woody and Bellinger's extensive history of specious workplace injury claims, and (2) documents concerning allegations of harassment against Defendant Brereton, including an ongoing DOCCS inquiry.

I. Plaintiff Is Entitled to Records Concerning Defendants Woody and Bellinger's Previously Claimed Workplace Injuries

The credibility of Defendants' workplace injury claims is central to this case. Defendant Woody claimed that he was unable to work for two and a half months due to injuries he sustained from an unprovoked attack by Plaintiff. Yet when he was examined by physicians on the night of the incident, they found a bruise on his hand and recommended a "treatment" of ice and Motrin and a return to work after three days. Since this incident, Defendant Woody has been criminally convicted of attempted workers' compensation fraud, and fired from his DOCCS employment, because of an incident where he claimed to have suffered an incapacitating injury while on duty but then continued moonlighting at a second job he failed to report to DOCCS while receiving thousands of dollars in benefits. *See* Ex. A at 123-24. The doctor who treated Defendant Woody for those injuries, and provided documentation substantiating his Workers'

Compensation claim, was Dr. Samuel Walters. *Id.* at 128, 135-36. During his deposition, Woody testified that he could not recall which doctor treated him for the injuries he sustained from Plaintiff, *id.* at 103, but records produced in discovery show that the same physician, Dr. Walters, submitted reports substantiating the extensive injuries Woody claimed he sustained from Plaintiff to justify his benefits claim. Dr. Walters, who has provided reports to the Workers' Compensation Board on behalf of numerous of correction officers, was later suspended by the Board from treating injured workers due to fraud concerns.¹ Woody has testified under oath that he has received Workers' Compensation benefits approximately *eight times*, including at least one additional instance (*other* than the one that led to his conviction) when he collected benefits despite continuing to work at a second job. *See id.* at 113-14, 153.

Likewise, Defendant Bellinger filed for and received Workers' Compensation benefits and missed over five months of work due to injuries he claims Plaintiff inflicted. Yet when he was seen at the hospital on the night of the incident, he was treated only for cuts and bruises and discharged with a suggestion to apply ice and take Motrin, with doctors finding "no evidence of any serious injury" in his exam and recommending that he be excused from work for only three days. In light of this discrepancy, Plaintiff's counsel inquired at Bellinger's deposition about his history of claiming work-related injuries. Bellinger testified that he has filed for and received Workers' Compensation benefits for a number of different incidents while working at DOCCS, including as recently as this year. Ex. B at 14-15. Indeed, the five months of work he missed after the incident at issue in this case is not even the only time he received benefits during a months-long absence from work at DOCCS due to an apparently superficial eye injury. *See id.* at 15-16 (two months of work missed with Workers' Compensation benefits due to "abrasion of the cornea"). Bellinger used the same doctors to substantiate his recent eye injury before the Workers' Compensation Board as he used in substantiating the injuries he claimed to have received from Plaintiff. *See id.* at 17-19. On another occasion, Bellinger filed a Workers' Compensation claim that resulted in a lump sum award of **\$48,000**. *Id.* at 20. Despite the impressive size of his benefits payment, he could not even remember the day or month when he received it or the nature of the injury. *Id.* at 21. He testified that he had documents "at home" that would help him recall more specifics. *Id.* Another time, Bellinger received Workers' Compensation benefits due to a slip-and-fall, but he could not remember anything about when the injury occurred other than that it was sometime between 2010 and 2018. *See id.* at 24-25. Again, Bellinger missed months of work. *Id.* at 26. On yet *another* occasion since 2010, Bellinger received Workers' Compensation because of an alleged altercation with an inmate. *Id.* at 31-32. Despite having missed months of work, he could not recall *anything* about the injury he sustained—including which part of his body he hurt, who his doctor was, whether he received a lump sum benefits payment, and whether he retained an attorney. *Id.* at 32-34.

In short, Woody and Bellinger have an extensive history of submitting Workers' Compensation claims connected to their work at DOCCS, relying on reports from the same physicians repeatedly, receiving tens of thousands of dollars in taxpayer-funded benefits, and missing months of work because of injuries they do not even remember sustaining and cannot place by year or body part. In this context, Plaintiff's request for documents relating to these past claims are highly relevant and appropriate. In this case, Plaintiff alleges that Defendants

¹ N.Y.S. Workers' Compensation Board, *Temporary Suspension of Samuel R. Walters' Authorization to Treat Injured Workers Effective June 13, 2016* (June 13, 2016), http://www.wcb.ny.gov/content/main/SubjectNos/sn046_861.jsp.

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Woody and Bellinger viciously and sadistically beat him with fists and batons, while Defendants contend that Plaintiff was the aggressor and that he injured them. Accordingly, their history of exaggerating injuries sustained while working at DOCCS in order to miss work and collect benefits is highly probative of the credibility of their respective accounts of the incident at issue. *See Davidson Pipe Co. v. Lavenhol & Horwath*, 120 F.R.D. 455, 463-64 (S.D.N.Y. 1988).

II. Plaintiff Is Entitled to Records Concerning an “Ongoing Investigation” and Other Documents Relating to Allegations of Harassment Against Defendant Brereton

During his deposition, Defendant Brereton testified about several allegations against him concerning harassment and mistreatment of subordinates, including sworn testimony he had given just weeks earlier concerning a harassment-related claim arising from his work for DOCCS. Defense counsel have since confirmed that this testimony referred to an interview that took place as part of an ongoing investigation into Brereton by the DOCCS Office of Special Investigations. Such documents are clearly discoverable. Defendant Brereton presided over Plaintiff’s disciplinary hearing and sentenced him to 30 months in the SHU, 21 of which Plaintiff served before the Third Department expunged the discipline as unconstitutionally imposed. In making his findings, Brereton relied exclusively on the accounts of subordinate officers—which he prompted them to provide through aggressive, leading questions—while discrediting Plaintiff and the other inmate witnesses. To the extent Brereton’s apparently extensive and widely known history of harassing and intimidating other officers may have influenced the officer witnesses to testify in the manner Brereton made clear he preferred, the information Plaintiff seeks about that history is highly relevant. However, Defendants have improperly invoked the law enforcement privilege to withhold all such documents. The privilege is inapplicable under governing law.²

“To show that the privilege applies, the party asserting the privilege must demonstrate that the documents contain information that the law enforcement privilege is intended to protect. Specifically, the party asserting the privilege must show that the documents in question contain (1) information pertaining to law enforcement techniques and procedures, (2) information that would undermine the confidentiality of sources, (3) information that would endanger witness and law enforcement personnel, (4) information that would undermine the privacy of individuals involved in an investigation, or (5) information that would seriously impair the ability of a law enforcement agency to conduct future investigations.” *In re The City of New York*, 607 F.3d 923, 948 (2d Cir. 2010). “In order to sustain the privilege, a party must make a clear and specific evidentiary showing of the nature and extent of the harm that is likely to be encountered if disclosure is permitted, and they may not rely simply on generalized reiterations of the policies underlying the privilege.” *Schiller v. City of New York*, No. 04 Civ. 7922, 2007 WL 136149, at *7 (S.D.N.Y. Jan. 19, 2007). Defendants have provided no information to support their sweeping privilege claim, let alone the affidavits from high-level DOCCS officials explaining how disclosure would jeopardize current or future investigations that courts typically require. An unadorned assertion that there is an “ongoing investigation” is insufficient to invoke the privilege. *Kitevski v. City of New York*, No. 14 Civ. 7402, 2006 WL 680527, at *3 (S.D.N.Y. Mar. 16, 2007).³ Production should therefore be compelled.

² Even if the privilege were properly invoked—which it is not—Plaintiff’s good-faith need for the discovery would outweigh any claim to confidentiality. *See S.E.C. v. Yorkville Advisors, LLC*, 300 F.R.D. 152, 159 (2014); *Floyd v. City of New York*, 739 F. Supp. 2d 376, 381 (S.D.N.Y. 2010).

³ Even to the extent some responsive documents could conceivably implicate the privilege, it is highly doubtful that every single responsive document is privileged in its entirety or that measures short of entirely withholding the

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Respectfully submitted,

/s/ David A. Lebowitz

Katherine Rosenfeld
David A. Lebowitz

Encl.

c. All Counsel of Record (via ECF)

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KENNETH SAMUELS,

Plaintiff,

Index No.

-against-

13 Civ. 8287 (KMK)

COMMISSIONER BRIAN FISCHER,

et al.,

Defendants.

-----x

DEPOSITION OF

RONALD WOODY

New York, New York

Tuesday, September 18, 2018

Reported by

Roberta Caiola

HUDSON REPORTING & VIDEO

1-800-310-1769

1 Ronald Woody

2 Q. The date of this is 6/16/2011, do you
3 see that?

4 A. Yes.

5 Q. On this document which was written by
6 the IG interviewer I believe, it states:

7 "At that point I was instructed by the
8 area supervisor to report to medical and get
9 treatment. Please be advised that as a result of
10 being assaulted by inmate Samuels I received the
11 following injuries, swelling to left side of face
12 and swelling to left hand, I was also out of work
13 approximately 2-1/2 months due to my injuries. I
14 was under the care of a doctor the entire time I
15 was out of work."

16 Did you make those statements to the
17 Inspector General?

18 A. Yes.

19 Q. Does looking at that document refresh
20 your recollection that you missed work as a
21 result of this incident with Mr. Samuels?

22 A. Yes.

23 Q. So it appears that you missed
24 approximately 2-1/2 months of work, is that
25 correct?

1 Ronald Woody

2 A. Yes.

3 Q. Does looking at this refresh your
4 recollection as to whether you received workers'
5 compensation in connection with this incident?

6 A. Yes.

7 Q. You did receive workers' compensation
8 in connection with this incident, correct?

9 A. I think so, yes.

10 Q. Well, if you were out of work for 2-1/2
11 months because of an injury you would have
12 received workers' compensation, correct?

13 A. Yes.

14 Q. Which doctor were you under the care
15 of?

16 A. I don't recall.

17 Q. Who's your family doctor?

18 A. My family doctor, I haven't been to one
19 in a while. I can't recall who it was back then.

20 Q. Was it Dr. Walters?

21 A. It might have been. I can't recall if
22 it was or wasn't.

23 Q. Did you ever see somebody named Dr.
24 Walters?

25 A. I have, yes.

1 Ronald Woody

2 Q. When was the last time you saw Dr.
3 Walters?

4 A. I can't recall when the last time it
5 was.

6 Q. You can set that aside, thank you. If
7 you receive workers' compensation as a result of
8 an incident you have to receive a medical
9 certification that you are, in fact, injured,
10 correct?

11 A. Yes.

12 Q. You can't recall who provided medical
13 care to you in connection with this incident, is
14 that correct?

15 A. Yes, that's correct.

16 Q. Do you recall what treatment you
17 received for this?

18 A. No, I don't recall what the treatment
19 was.

20 Q. So you had swelling to your left hand,
21 is that correct?

22 A. Yes.

23 Q. Why you did miss work for 2-1/2 months
24 as a result of your hand swelling?

25 MR. STABILE: Object to form.

1 Ronald Woody

2 I can't find what I'm looking for, so we'll have
3 to go back to that.

4 While you worked as a correction
5 officer at Sing Sing were you aware of any
6 incidents where officers used excessive force
7 against inmates?

8 A. No.

9 Q. Were you aware of any efforts by the
10 superintendent or supervisors of the facility to
11 address excessive force against inmates?

12 A. No.

13 Q. Did you hear any discussions at the
14 facility amongst correction officers about using
15 force against inmates?

16 A. No.

17 Q. Did you read any articles in the
18 newspaper at any point about the issue of
19 excessive force by officers at Sing Sing?

20 A. No.

21 Q. Have you heard that there was a problem
22 at Sing Sing with excessive force by officers
23 against inmates at Sing Sing?

24 A. No.

25 Q. You submitted a number of claims for

1 Ronald Woody

2 workers' compensation while you were employed at
3 the Department of Corrections, correct?

4 A. Yes.

5 Q. How many times did you receive workers'
6 compensation while you were employed at the DOC?

7 A. I can't recall, but I know it's three
8 for sure. I had rotator cuff surgery to the left
9 shoulder, spinal surgery, and I've also had Tommy
10 John surgery.

11 Q. Were all of the surgeries related to
12 injuries that you sustained as a correction
13 officer?

14 A. Yes.

15 Q. Do you recall testifying at the
16 arbitration regarding the penalty for your
17 termination case?

18 Do you recall testifying at the
19 arbitration hearing that you had received
20 workers' compensation approximately eight times?

21 A. I don't recall.

22 Q. Would that number sound wrong to you?

23 A. I don't recall ma'am, I really don't.

24 Q. So it's possible that you received
25 workers' compensation eight times?

1 Ronald Woody

2 A. I know I received it, but I don't know
3 how many times.

4 Q. It could be eight times?

5 A. I don't recall how many times.

6 Q. Since you don't recall you have no way
7 of knowing whether it's seven, eight, ten, five,
8 is that correct?

9 A. That's correct. I can't give a number
10 if I can't recall.

11 Q. Do you recall an incident in January of
12 2015 where you suffered an elbow and a forearm
13 strain as a result of attempting to close a stuck
14 metal door?

15 A. That's this injury, yes, that's the one
16 I told you about. I had the tendon repaired and
17 a vein moved from one spot to another.

18 Q. That was as a result of the injury that
19 was incurred as a result of trying to close a
20 stuck door?

21 A. Yes.

22 Q. You also reported that you sustained
23 another injury in connection with a door in 2012,
24 is that correct?

25 A. I can't recall. Was that at Sing Sing?

1 Ronald Woody

2 Q. Yes.

3 A. Was that on X gallery?

4 Q. Did you sustain an injury at Sing Sing
5 as a result of a door?

6 A. I don't know if it was a door or it
7 could have been the gallery.

8 Q. Wait sir, I'm going to give you a
9 document.

10 (Plaintiff's Exhibit 38, Employee
11 Injury Report dated 8/14/12, Bates stamped
12 SAMUELS_1341 and SAMUELS_1342, marked for
13 identification.)

14 Q. I'm handing you what's been marked as
15 Exhibit 38, which is Bates stamped SAMUELS_1341
16 and 1342. This is an Employee Injury Report
17 dated 8/14/12, and it says Officer R. Woody was
18 closing the U gallery, I cannot read that word,
19 north side breaker slop sink door, opened the
20 door, couldn't slide, causing pain in, I can't
21 read that, upon closing. Then on the other side
22 it says that you have pain to your left wrist and
23 fingers.

24 So does looking at this document remind
25 you that this was another time when you injured

1 Ronald Woody

2 ever had in your life?

3 A. I've had one when I was younger, but
4 that was it.

5 Q. Before you worked at the Department of
6 Corrections?

7 A. Maybe. I'm not sure if it was before
8 or during.

9 Q. Where was that bank account?

10 A. I can't recall.

11 Q. What bank was it?

12 A. Chase.

13 Q. What bank do you bank with now?

14 A. Wells Fargo.

15 Q. When you received workers' compensation
16 payments while you were working at the Department
17 of Corrections, how did you receive those?

18 A. It was a check.

19 Q. All of those workers' compensation
20 payments that you received, did any of them go
21 into a bank account?

22 A. No.

23 Q. So you were terminated from the
24 Department of Corrections in March 2016, is that
25 correct?

1 Ronald Woody

2 A. I'm not sure of the year, but yes, I
3 was terminated.

4 Q. Why were you terminated?

5 A. Say that again?

6 Q. Why were you terminated?

7 A. They said it was attempted workers'
8 comp fraud. The exact word was attempt to
9 attempt.

10 Q. Let's go back to your interrogatory
11 responses, page 7. In this interrogatory
12 response you say, "In 2016 I pleaded guilty to a
13 misdemeanor for workers' compensation fraud and
14 thereafter it was terminated by DOCCS in
15 March 2016," do you see that?

16 A. Yes.

17 Q. Were you terminated from DOCCS in March
18 2016?

19 A. I don't remember the month, but that's
20 the year.

21 Q. I'm showing you the document that you
22 verified and swore was true and accurate, does
23 that refresh your recollection?

24 A. Yes.

25 Q. That you were terminated by the DOC in

1 Ronald Woody

2 March 2016?

3 A. Yes.

4 Q. Does it also refresh your recollection
5 that in 2016 you pled guilty to a misdemeanor for
6 workers' compensation fraud?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. Why were you terminated from the
11 Department of Corrections?

12 A. The exact word from the arbitrator was
13 since I could not make a decision -- since the
14 judge could not make a decision I'm not going to
15 make a decision, so then they terminated me.
16 Before the termination they had me set up to go
17 back to work.

18 Q. What's your understanding of why you
19 were terminated?

20 A. They said I attempted.

21 Q. You attempted what?

22 A. Workers' comp fraud because I was
23 working at one job and they said I wasn't -- the
24 document stated as long as I wasn't doing
25 anything within my job scope of corrections I was

1 Ronald Woody

2 good. I worked a few days and I stopped and then
3 this came about.

4 (Plaintiff's Exhibit 39, Employee Time
5 History Report, Bates stamped SAMUELS_1308,
6 marked for identification.)

7 Q. So this document is Bates stamped
8 SAMUELS_1308, this is your time record from your
9 job at Yankee Stadium.

10 Directing your attention to the top
11 line. Do you see where it says August 14, 2012,
12 it says 4:30 p.m., and you earned \$150 working
13 that game?

14 A. Yes, I see it.

15 Q. Looking at Exhibit 38. This is the day
16 that you hurt your hand on the breaker switch,
17 that was also August 14, 2012, correct?

18 A. Yes.

19 Q. So the day that you hurt your hand on
20 the breaker switch you also then reported for
21 duty at 4:30 p.m. to Yankee Stadium?

22 A. Yes.

23 Q. Were you injured in the August 14, 2012
24 breaker incident?

25 A. Yes, but I'm not sure of the time this

1 Ronald Woody

2 Q. What forms are you talking about?

3 A. Oh, gosh, I don't remember, I have to
4 see them.

5 (Plaintiff's Exhibit 40, Document for
6 Workers' Compensation Leave, Bates stamped
7 SAMUELS_1332 TO SAMUELS_1351, marked for
8 identification.)

9 Q. I'm handing you what's been marked as
10 Plaintiff's Exhibit 40, which is Bates stamped
11 SAMUELS_1332 TO SAMUELS_1351.

12 Was Dr. Walters your doctor at the time
13 of the 8/14/12 incident?

14 A. Yes.

15 Q. Did you see him for treatment for your
16 injury?

17 A. Yes.

18 Q. It says here the first time that you
19 received treatment from Dr. Walters was 8/15/12,
20 do you see that?

21 A. Yes.

22 Q. It says you had a crushed left hand
23 injury and a sprained left wrist, do you see
24 that?

25 A. Yes.

1 Ronald Woody

2 Q. Turning to the next page, 1333. This
3 is a form that Dr. Walters filled out to support
4 your request for workers' compensation, correct?

5 A. Yes.

6 Q. On this form it says that you're
7 incapacitated from work from 8/15/12 to 8/29/12,
8 do you see that?

9 A. Yes.

10 Q. It says your prognosis is guarded, do
11 you see that?

12 A. Yes.

13 Q. If you continue and you look through
14 these pages they document your ongoing submission
15 of workers' compensation request stemming from
16 this 8/14/12 injury, is that correct?

17 A. Yes.

18 MS. ROSENFELD: Will you mark this,
19 please.

20 (Plaintiff's Exhibit 41, Report of
21 Disciplinary Action, Bates stamped
22 SAMUELS_1174 through SAMUELS_1176, marked
23 for identification.)

24 Q. I'm handing you what's been marked as
25 Exhibit 41. Have you seen this document before?

1 Ronald Woody

2 A. Yes.

3 Q. It states that you're being dismissed
4 from state service because you were arrested for
5 insurance fraud and grand larceny, correct?

6 A. Yes.

7 Q. If you turn over there's a Notice of
8 Discipline dated January 6, 2015, correct?

9 A. Yes.

10 Q. You were served with this, right?

11 A. Yes.

12 Q. The allegation here is that between
13 August 14, 2012 and December 2, 2012 you
14 fraudulently accepted benefits to which you were
15 not entitled in violation of various statutes,
16 that's at number 2, do you see that?

17 A. Yes.

18 Q. Do you see that it says that you made
19 false statements and submitted documents and
20 therefore received in excess of \$3,000 in
21 workers' compensation benefits, do you see that?

22 A. Yes.

23 Q. Continuing on to SAMUELS_1176, it's the
24 last page. It says that you engaged in egregious
25 misconduct and filed false documents and made

1 Ronald Woody

2 A. I found out after the situation.

3 Q. So you are aware of what light duty is?

4 A. After the situation I was, but during
5 the situation I didn't know about it.

6 Q. What's light duty?

7 A. I don't know what they do. I heard it
8 was just light duty after the fact, but I was
9 already terminated.

10 Q. So you didn't know that you could work
11 light duty at the facility with your injury?

12 A. No, I did not.

13 Q. You pled guilty to this misdemeanor,
14 workers' compensation fraud, correct?

15 A. Yes.

16 Q. You had a lawyer in that proceeding?

17 A. Yes.

18 Q. And you pled guilty, and you
19 acknowledged that you committed workers'
20 compensation fraud, is that correct?

21 A. Yes.

22 Q. What is the fraud that you committed?

23 A. I don't remember what it was, but it
24 was they said attempt to attempt. They told me
25 to take a lesser charge so that I could go back

1 Ronald Woody

2 to corrections. I took the charge. If I would
3 have known that I was not going to be allowed
4 back to corrections I would have kept fighting
5 the case. But the DA and everyone got together
6 and talked about it, and I was told to take it so
7 that I could get back to work.

8 Q. What was your understanding of what the
9 fraud that you pled guilty to consists of?

10 A. I don't know.

11 Q. Do you understand that by pleading
12 guilty to the workers' compensation fraud you
13 acknowledge that you engaged in fraud in
14 submitting workers' compensation for that
15 August 14, 2012 incident?

16 A. Yes.

17 Q. You understand the Department of
18 Corrections terminated you because it believed
19 that you were untruthful and had made false
20 statements to it?

21 A. Yes.

22 Q. Thank you. How did you find your
23 doctor, Dr. Samuel Walters?

24 A. I don't recall.

25 Q. Do other officers at the Department of

1 Ronald Woody

2 Corrections see Dr. Walters?

3 A. I don't recall. I wouldn't know.

4 Q. Dr. Walters certified for many months
5 that you had a left wrist injury that prevented
6 you from returning to work at the Department of
7 Corrections?

8 A. Yes.

9 Q. Did he know that you were working at
10 Legends at that time?

11 A. No.

12 Q. Did you tell him?

13 A. No.

14 Q. Did you keep it from him?

15 A. I had no reason to tell him. I didn't
16 think I had to tell him.

17 Q. So you were going to see a doctor on an
18 almost biweekly basis to certify that you were
19 incapable of working due to an injury, and you
20 didn't think that it was important to tell him
21 that you actually had another job that you were
22 doing?

23 MR. STABILE: Object to form. You can
24 answer.

25 A. I wasn't using that wrist. I had a

1 Ronald Woody

2 brace on the wrist. I never used my left hand at
3 all, so I didn't think about it.

4 Q. Did you have an arbitration hearing?

5 A. For this?

6 Q. For this incident?

7 A. Yes.

8 Q. Did you testify in person?

9 A. Yes.

10 Q. Were you present when the Deputy
11 Superintendent of Security at Fishkill, Dale
12 Long, testified?

13 A. Yes.

14 Q. Were you present when Mr. Long said
15 that he regards you to be a liar and a thief?

16 A. Yes, I was there.

17 Q. Were you present when Mr. Long
18 testified that your absence from work made it
19 difficult to overcome staffing shortages and
20 depleted resources?

21 A. Yes.

22 Q. Were you present when Mr. Long
23 testified that you can no longer serve as a role
24 model for inmates?

25 A. Yes.

1 Ronald Woody

2 got it because they terminated me, I looked at
3 the package that said I was terminated. He
4 called me and said I was terminated. I got the
5 notice and I didn't open it.

6 Q. I'm just trying to establish what is
7 correct in terms of the underlying facts about
8 this leave.

9 So you're saying that you were not
10 absent for 108 days, and you never said that you
11 were, is that right?

12 A. Yes, that's what I'm saying.

13 Q. Did you testify that you sustained a
14 sprained wrist on August 14, 2012?

15 A. Yes, I did sustain something on
16 August 14th, yes.

17 Q. But did you testify to that at the
18 hearing?

19 A. It's been so long I don't know, I'm
20 just reading it now. I don't recall what was
21 said.

22 Q. You recall very clearly that you didn't
23 testify about being absent for 108 days. Do you
24 recall that you testified about having a sprained
25 wrist?

1 Ronald Woody

2 MR. STABILE: Object to form.

3 A. I was out because of an injury.

4 Q. Is it correct here where it says, "On
5 that date I absented myself from work as a result
6 of the injury and filed for workers' compensation
7 leave," is that correct?

8 A. Where is that at?

9 Q. That's in the third bullet in the
10 second sentence.

11 A. I still don't see it. Yes.

12 Q. Do you see that?

13 A. Yes, I see it.

14 Q. Is that correct?

15 A. Yes, I went out that day.

16 Q. If you go down it says, "Upon
17 cross-examination Ronald Woody stated the
18 following." It says, "I have filed Workers'
19 Compensation claims before. Eight times in the
20 past, would not surprise me. I believe I was
21 working at Legends during at least one of the
22 past times I was on workers' compensation leave."

23 Is that a correct summary of your
24 testimony from the hearing?

25 A. I don't remember saying the exact

1 Ronald Woody

2 amount of times, but when they presented one of
3 the exhibits with the pay schedule, yes, that's
4 when I stated that.

5 Q. Just because I need to make the record
6 more clear about what we agree and disagree
7 about.

8 That statement that I just read which
9 says, "I have filed workers' compensation claims
10 before," is that true?

11 A. I filed them before, yes, I have.

12 Q. Then it says "eight times in the past
13 would not surprise me," is that correct?

14 A. No, that's not correct, because I'm not
15 sure if I would have gave them eight times. I
16 wouldn't have known how many times I filed.

17 Q. So you don't believe you testified to
18 that?

19 A. I don't recall if I did or didn't.

20 Q. If it says here that you did, what
21 makes you think that that's inaccurate?

22 A. Because there's other statements in
23 here that's inaccurate.

24 Q. What about this statement, "I believe I
25 was working at Legends during at least one of the

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO.: Civ. 8287 (KMK)

KENNETH SAMUELS,

Plaintiff,

vs.

COMMISSIONER BRIAN FISCHER, et al,

Defendants.

Septmeber 25, 2018

10:25 a.m.

Deposition of TIMOTHY BELLINGER, held at the
offices of Emery, Celli, Brinckerhoff & Abady, LLP,
600 Fifth Avenue, New York, New York, pursuant to
Notice, before Danielle Grant, a Notary Public of the
State of New York.

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1 Timothy Bellinger

2 Q Have you ever been convicted of
3 any crime?

4 A No.

5 Q Have you ever been arrested?

6 A No.

7 Q Have you ever been disciplined by
8 the Department of Corrections?

9 A Yes.

10 Q When was --

11 A I'm trying to figure what that
12 mean, but yes, I'm trying to figure out what you
13 mean by that.

14 Q Well, when you said "yes," what
15 were you thinking of?

16 A Tardiness.

17 Q You were disciplined for being
18 tardy?

19 A Yes.

20 Q And you had to pay a fine in
21 connection with that?

22 A Yes.

23 Q How much did you have to pay?

24 A Not sure, but I had to pay.

25 Q Did you pay the amount of the

1 Timothy Bellinger

2 fine?

3 A Yes.

4 Q Did the department allege that
5 you were tardy to work on a number of occasions?

6 A Repeat that again.

7 Q Sure. The Department of
8 Corrections disciplined you because you were
9 late to work on a number of occasions; is that
10 correct?

11 A Yes.

12 Q Why were you late to work so many
13 times?

14 A No -- I didn't have a car. I had
15 to rely on Metro North.

16 Q Have you ever received Workers'
17 Compensation?

18 A Yes.

19 Q How many times have you received
20 Workers' Compensation?

21 A Not sure of the numbers, but I
22 received Workers' Compensation.

23 Q Okay. You received Workers'
24 Compensation in connection with this incident
25 where Mr. Samuel is involved, correct?

1 Timothy Bellinger

2 A Yes.

3 Q Have you received Workers'

4 Compensation on any other occasion involving a
5 different injury than the one in this lawsuit?

6 A Yes.

7 Q When was the last time that you
8 received Workers' Compensation?

9 A That was this year.

10 Q When you say "this year," do you
11 mean 2018?

12 A Yes.

13 Q How were you injured this year?

14 A Doing training.

15 Q What was your injury?

16 A Eye injury.

17 Q How did you injure your eye while
18 you were doing training?

19 A This was a chemical that they
20 spray for the officers for training.

21 Q And it was sprayed into your eye?

22 A It was sprayed for our facial
23 area.

24 Q And how was your eye injured?

25 A It was abrasion of the cornea.

1 Timothy Bellinger

2 Q How many days of work did you
3 miss?

4 A Let me see, it was about --
5 around two months.

6 Q Which months of 2018 would that
7 have been?

8 A Yes.

9 Q I'm sorry. Which months of 2018?

10 A I'm not sure exactly what month,
11 but it's on my job status when I was out. I
12 don't have it with me.

13 Q Well, it's September now, right?

14 A Um-hmm.

15 Q You have to say yes or no,
16 please.

17 A Yes.

18 Q It's because the court reporter,
19 if we say um-hmm, she cannot record that.

20 So given that it's September now,
21 were you out over the summer?

22 A Yes.

23 Q Were you out in June of 2018?

24 A I'm not sure.

25 Q So sometime in the summer of

1 Timothy Bellinger

2 2018, you were out of work for two months due to
3 an injury to your cornea; is that correct?

4 A Yes.

5 Q Did you receive treatment from a
6 doctor for this injury?

7 A Yes.

8 Q Which doctors did you see for
9 this injury?

10 A This was in Ossining, Phelps.

11 Q P-H-E-L-P-S?

12 A Yes.

13 Q Who was Dr. Phelps?

14 A No, that that's the name of the
15 hospital.

16 Q Oh, I'm sorry. So you went to
17 Phelps Hospital?

18 A Yes.

19 Q Okay. Any other medical care
20 that you received for this injury?

21 A Yes.

22 Q Where was that?

23 A This was Ear and Eye on 14th
24 Street in Manhattan.

25 Q Did you see your primary care

1 Timothy Bellinger

2 doctor in connection with this?

3 A No.

4 Q Is your primary doctor still Dr.
5 Walters?

6 A No.

7 Q Okay. Do you have a current
8 primary care doctor?

9 A Yes.

10 Q Who is that person?

11 A That's Dr. Vlattas.

12 Q Could you spell that, sir?

13 A It's V-L-A-T-T-A-S.

14 Q Where does Dr. Vlattas practice?

15 A That's on Pelham Bay. That's on
16 Westchester Avenue and Pelham Bay.

17 Q In the Bronx?

18 A Yes.

19 Q So did a medical professional
20 certify to the Workers' Compensation Board that
21 you needed to be out of work for two months?

22 A Repeat that again.

23 Q Did you submit an application to
24 the Workers' Compensation Board to receive
25 Workers' Compensation for the two months that

1 Timothy Bellinger

2 you were out this summer?

3 A Yes.

4 Q Did you have medical
5 documentation of your injury?

6 A Yes.

7 Q Who provided that medical
8 documentation?

9 A That would be Ear and Eye on 14th
10 Street. That was the one.

11 Q Did you see any other doctors in
12 connection with this incident, other than the
13 Eye and Ear Infirmary and Phelps Hospital?

14 A No.

15 Q Do you know the name of the
16 doctor that you saw at the Eye and Ear
17 infirmary?

18 A I don't remember the name. Don't
19 have the documentation with me.

20 Q Okay. Did you have a lawyer in
21 connection with your Workers' Compensation
22 claim?

23 A Yes.

24 Q What is the name of your lawyer?

25 A I can't remember the name, but I

1 Timothy Bellinger

2 have the documentation.

3 Q Is it Attorney Rosado?

4 A No.

5 Q It's a new attorney?

6 A Yes.

7 Q How did you find your attorney
8 for this matter?

9 A In the Chief newspaper.

10 Q Why did you need an attorney for
11 this matter?

12 A Everybody recommend, you know, to
13 have an attorney.

14 Q When you say "everybody," do you
15 mean your co-workers at Sing Sing?

16 A Yes.

17 Q What did the attorney do for you?

18 A He worked on my case.

19 Q Did you have to pay him out of
20 your award?

21 A Yes.

22 Q Did you get a lump sum payment?

23 A Yes.

24 Q How much did you receive?

25 A It was 48,000 and change.

1 Timothy Bellinger

2 Q So you got a \$48,000 payment?

3 When did you receive that?

4 A Not sure of the day. Not sure of
5 the day.

6 Q Can you tell me the month that
7 you received that payment?

8 A Not sure of the month.

9 Q Okay. So you did identify that
10 the injury occurred sometime -- withdrawn.

11 You testified that you were out
12 of work for two months in the summer of 2018 as
13 a result of this eye injury, correct?

14 A For the two months, I'm not sure
15 exactly the timeframe of two months. It could
16 be more. So that one is, like, not sure due to
17 I don't have the documentation.

18 Q Okay. Which documents would help
19 you be more certain about when you were out of
20 work?

21 A The documents I have at home.

22 Q Which are what?

23 A Saying my C3 -- C3 forms.

24 Q Okay. So going back to the
25 \$48,000 payment, that was a payment that you

1 Timothy Bellinger

2 received from your Workers' Compensation claim
3 for your 2018 eye injury; is that correct?

4 A No.

5 Q Oh, okay. Can you clarify
6 please? What is that payment for?

7 A That was for another Workers'
8 Comp.

9 Q Okay. So let's stick with the
10 one that we're just discussing. In 2018, you
11 testified that you had an injury to your eye
12 while you were training and you had a corneal
13 abrasion; is that correct?

14 A Yes.

15 Q And you saw doctors at Phelps
16 Hospital and the Eye and Ear infirmary, correct?

17 A Yes.

18 Q Did you receive a lump sum
19 payment for that injury?

20 A No.

21 Q Did you continue to be paid as
22 though you were working while you were out of
23 work?

24 A Yes.

25 Q So there was no interruption in

1 Timothy Bellinger

2 your compensation, Correct?

3 A Yes, it was.

4 Q There was an interruption?

5 A Yes.

6 Q Okay. How long were you not paid

7 for?

8 A I would say maybe two pay

9 periods.

10 Q For the injury to your cornea
11 from the 2018 training incident, did you have an
12 attorney?

13 A Yes.

14 Q And you were granted Workers'
15 Compensation for that period; is that correct?

16 A Correct.

17 Q And the Workers' Compensation you
18 received was not a lump sum payment; is that
19 correct?

20 A Can you repeat that again?

21 Q Sure. For the most recent
22 Workers' Compensation claim, you did not receive
23 a lump sum payment; is that correct?

24 A Correct.

25 Q You simply received your normal

1 Timothy Bellinger

2 salary while you were out of work; is that
3 correct?

4 A Correct.

5 Q Okay. So when was -- before
6 2018, before this corneal abrasion accident,
7 when was the next -- when was the most recent
8 time that you received Workers' Compensation?

9 A I had one that was dealing with a
10 hand injury, a foot injury, and a knee injury.

11 Q Are those three separate ones or
12 one incident?

13 A That was one incident.

14 Q So you had another Workers'
15 Compensation case where you had injured your
16 hand, foot and knee; is that correct?

17 A Correct.

18 Q How did you injure your hand,
19 foot and knee?

20 A That was when I walking down the
21 stairs and there was a substance on the steps.

22 Q Did it cause you to slip?

23 A Yes.

24 Q And did you fall down?

25 A Yes.

1 Timothy Bellinger

2 Q And you injured your hand, foot
3 and knee?

4 A Yes.

5 Q What year did that incident take
6 place?

7 A That one, I can't remember on
8 that year.

9 Q Okay. So just to give you a
10 reference point, the incident with Mr. Samuels
11 occurred in 2010. Did the incident where you
12 injured your hand, foot and knee take place
13 after the incident with Mr. Samuels?

14 A Yes.

15 Q So sometime between 2018 and
16 2010?

17 A Yes.

18 Q But you can't say with any
19 greater specificity if it was closer to 2010 or
20 closer to 2018?

21 A It wasn't -- I can't say.

22 Q You can't place it in any greater
23 degree of specificity in that eight-year period?

24 A No.

25 Q Okay. So what was the injury

1 Timothy Bellinger

2 that you sustained in connection with falling on
3 the stairs?

4 A There was my -- it was my right
5 foot, my knee, my hand. And they also checked,
6 for precaution, my head, for precaution.

7 Q Okay. And how long were you out
8 of work for that incident?

9 A Not sure, due to I don't have my
10 documentations.

11 Q Okay. Was it a period of months?

12 A Yes.

13 Q Was it more than a year?

14 A No.

15 Q Okay. Was it more than one
16 month?

17 A Yes.

18 Q More than two months?

19 A Yes.

20 Q More than three months?

21 A Yes.

22 Q More than four months?

23 A That one, I'm not sure.

24 Q So for this incident where you
25 fell down the stairs, you were out of work on

1 Timothy Bellinger

2 Workers' Compensation for at least three months;
3 is that correct?

4 A I don't know if it's correct
5 because I'm just saying that I'm not sure of the
6 months. I don't have my documentation.

7 Q I understand. So when you fell
8 down the stairs, did you -- and you hurt
9 yourself; is that correct?

10 A Yes.

11 Q And you applied for Workers'
12 Compensation?

13 A Yes.

14 Q And was that application granted?

15 A Yes.

16 Q And did you receive a lump sum
17 payment?

18 A That one -- that one, I can't
19 recall on that one.

20 Q Were you paid during the months
21 that you were out of work after you fell down
22 the stairs?

23 A Yes.

24 Q And is it your understanding that
25 you were receiving Workers' Compensation?

1 Timothy Bellinger

2 unknown date. Are there any other times where
3 you ever have injured yourself at work and
4 received Workers' Compensation, other than the
5 two that we've discussed?

6 A I'm not sure when you mean
7 "injured." I'm not sure what you mean by
8 "injured."

9 Q Okay, so are there any times
10 other than the corneal abrasion incident and
11 when you fell down the stairs that you applied
12 for Workers' Compensation?

13 A Yes.

14 Q Okay. What was -- what was the
15 injury that was the basis of the application?

16 A There was an altercation.

17 Q Okay. And was that the
18 altercation with Mr. Samuels?

19 A No.

20 Q Okay. A different altercation.
21 Who was that inmate involved in that
22 altercation?

23 A I don't remember the inmate.

24 Q What year did that occur?

25 A Not sure of the year.

1 Timothy Bellinger

2 Q Was it before or after the
3 incident with Mr. Samuels?

4 A That would be after.

5 Q Okay. And how were you injured
6 in that incident?

7 A From the inmate. From the inmate
8 assault.

9 Q What did the inmate -- how were
10 you hurt?

11 A I was hurt by subduing the
12 inmate, you know, and I got hurt when it -- when
13 we came down to, on the ground.

14 Q What part of your body did you
15 hurt?

16 A That one I'm not sure. I need to
17 see my documentations.

18 Q Do you have documentation of that
19 at home?

20 A I'm not sure I have it at home,
21 but it would be with the job and the attorney.

22 Q Who was your attorney in that
23 case?

24 A That one, I'm not sure.

25 Q How long were you out of work

1 Timothy Bellinger

2 when you had this altercation with the inmate
3 and you injured yourself taking -- subduing the
4 inmate?

5 MR. STABILE: Object to form.

6 Q How long did you have to miss
7 work for following this injury from subduing the
8 inmate?

9 A I don't remember.

10 Q Okay. Was it a month?

11 A When you say -- say it again.

12 Q Were you out of work for one
13 month at least?

14 A Yes.

15 Q Were you out of work for two
16 months?

17 A Yes.

18 Q Were you out of work for three
19 months?

20 A Not sure.

21 Q Okay. So, and you can't tell me
22 with any greater specificity how you were
23 injured? Did you hurt your hand, your foot,
24 your face, your ear?

25 MR. STABILE: Object to form.

1 Timothy Bellinger

2 A I don't remember.

3 Q But you remember applying for
4 Workers' Compensation for an incident where you
5 injured yourself subduing an inmate; is that
6 correct?

7 A Can you say that again.

8 MS. ROSENFELD: Can you read the
9 question back, please.

10 (The requested portion of the record was
11 read back.)

12 A Yes.

13 Q But you can't recall how you
14 injured yourself; is that correct?

15 A That's correct.

16 Q And you can't recall the name of
17 your attorney; is that correct?

18 A That's correct.

19 Q Do you -- did you have to get
20 medical care?

21 A Yes.

22 Q Who was your doctor?

23 A Don't remember. Don't remember.

24 Q Did you receive a lump sum
25 payment for that injury?

1 Timothy Bellinger

2 A Don't remember.

3 Q Okay. Going back to the incident
4 where you fell down the stairs and injured
5 yourself on the foot, hand and knee. Who was
6 your doctor for that incident?

7 A I don't remember.

8 Q Did you see Dr. Walters?

9 A Not sure.

10 Q Is it possible that you saw Dr.
11 Walters?

12 A Not sure.

13 Q Well, listen to my question. Is
14 it possible that you saw Dr. Walters?

15 A Not sure.

16 Q So you don't have any memory of
17 who your doctors were for when you injured
18 yourself falling down the stairs; is that
19 correct?

20 A That's correct.

21 Q So now we have four incidents
22 where you applied for Workers' Compensation due
23 to a workplace injury. In 2018, when you had a
24 corneal abrasion from training, the incident
25 where you fell down the stairs because you

1 Timothy Bellinger

2 slipped, the incident where you had an
3 altercation with an unknown inmate when you were
4 subduing that person, and we know for
5 Mr. Samuels. Are there any other times that you
6 have applied for Workers' Compensation while you
7 were employed at Sing Sing?

8 A I can't remember any. I don't --
9 I'm not sure.

10 Q Okay. As you sit here today, do
11 any other incidents come to mind?

12 A No.

13 Q Okay. Can you recall the name of
14 any lawyer that ever represented you in a
15 Workers' Compensation proceeding?

16 A No.

17 Q You have had two lawyers for
18 these proceedings; is that correct?

19 A Yes.

20 Q Did the lawyers you use represent
21 other corrections officers?

22 MR. STABILE: Object to form. Go
23 ahead.

24 A Can you say that again?

25 Q Sure. Did the officers --